IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

REVISION APPLICATION NO.124 OF 2006

Balekhan Karimkhan Mohammad Khan ...Applicant

Versus

Yusuf Rajjak Kureshi & Ors. ...Respondents

.....

Mr.K.Bhopate for Applicant.

Dr.S.R.Bhsale for Respondent No.2.

.....

CORAM: A.M.KHANWILKAR, J.

MARCH 6, 2007.

P.C.

1. Heard Counsel for the parties.

2. Rule. Dr.Bhosale waives notice for Respondent No.2. None appears for Respondents 1 and 3 though served.

3. As short question is involved, Revision is taken up for hearing forthwith.

4. This Revision Application takes exception

to the Judgment and Order passed by the 7th Adhoc Additional District Judge, Pune dated June 23, 2006 below Exhibit 15 in Civil Appeal No.392 of 2006. By the said order, the lower Appellate Court rejected the application preferred by the Applicant/Respondent No.1 (original Defendant in the Appeal) for dismissing the Appeal for want of jurisdiction. It is not in dispute that the original proceedings filed by the Plaintiff is Suit under Section 6 of the Specific Relief Act. In such a Suit, no Appeal is available against any order or decree passed by the Trial court in view of sub-section (3) of Section 6 of the Specific Relief Act. The Court below has clearly glossed over this statutory provision in rejecting the application preferred by the Applicant herein.

5. Thus understood, the impugned Judgment and Order of the lower Appellate Court will have to be set-aside and instead, Application preferred by the Applicant below Exhibit 15 deserves to be allowed.

6. The consequence of this order is to hold that the Civil Appeal No.392 of 2006 preferred

before the 7th Adhoc District Judge, Pune by the original Plaintiff against the Judgment and decree passed by the Trial Court in Suit No.1341 of 2006 dated 12th April 2006 will have to be consigned to the record as not maintainable. Indeed, it will be open to the Plaintiffs to take recourse to such other remedy as may be permissible by law which will have to be decided on its own merits, uninfluenced by the present order.

7. Revision Application disposed of accordingly.

A.M.KHANWILKAR, J.